Supreme Court, U.S.
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NO. _____

In The
Supreme Court of The United States
October Term 1996

DONALD A. ANCHORS
Petitioner

vs.

UNITED STATES OF AMERICA
Respondent

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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71 pp

QUESTIONS PRESENTED

1. Whether the appellate court is permitted to apply a guilt based harmless error analysis and affirm a conviction based solely on circumstantial evidence of a defendant's guilt?

2. Whether, in a harmless error analysis, an appellate court can exceed the scope of normal appellate review and disregard of the trial judge's statements regarding the influence that certain testimony had upon the jury?

LIST OF ALL PARTIES

The Petitioner is Donald A. Anchors, a defendant below.

Additional defendants who are not participating in this appeal include John J. Voigt and Ralph A. Anderskow.

The respondent is the United States of America, plaintiff below.

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Petitioner respectfully requests that a Writ of Certiorari issue to review the judgment entered by the Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Third Circuit is unreported and is reproduced *infra* at Appendix A. The Order denying appellants' Petition for Rehearing dated August 13, 1996 is reproduced *infra* at Appendix B.

JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was initially entered on July 9, 1996. The Court of Appeals denied the Petitioners' timely petition for rehearing on August 13, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

This action arises out of the Government's indictment and proceedings against the petitioner, Donald A. Anchors, along with his co-defendants for their participation in a multi-member conspiracy to defraud various borrowers and investors. Over counsel's objection, the District Court permitted a co-conspirator, Skip Alevy, to testify as a government witness, with respect to Mr. Anchors' mens rea in the participation in a criminal conspiracy. Mr. Anchors appealed his judgment of conviction and sentence on the basis that this lay opinion testimony violated the strictures of Rule 701 of the Federal Rules of Evidence which limits opinion testimony. Upon consideration of Anchor's Motion to Strike, the Trial Judge upheld its earlier ruling and stated that Alevy's testimony had been "very helpful to the jury." App. C at A-38. Upon review of the District Court's decision, the United States Court of Appeals for the Third Circuit concluded that although Alevy's opinion testimony was erroneously admitted because it failed to meet the requirements of Rule 701, the admission was harmless error because "the circumstantial evidence of Alevy's knowledge was overwhelming" and "there is no possibility that Alevy's opinion testimony ... contributed to the verdict." App. A at A-13 (emphasis added). The Appellate Court ignored the implications of the Trial Court's finding as to helpfulness. It is submitted that what is "helpful" cannot be "harmless".

The Conspiracy

John Voigt masterminded a scheme to obtain fees from loan applicants and potential investors for non-existent loan and investments using the Euro-American Money Fund Trust (the "Trust"). In January, 1991, after Voigt and his Trust has been in operation for almost two years, Anchors was hired for the position of "loan oversight officer." Anchors had previously been employed as a real estate salesman in Pittsburgh, Pennsylvania. Nothing in his background prepared him for his association with the Trust.

Anchors was hired by telephone. He was told that loans were about to be funded and his job was to monitor the borrowers and determine that funds were used as intended. Anchors never solicited borrowers; collected fees from borrowers; or signed commitment letters. Anchor's confidence in the Trust was reinforced by the fact that each of the borrowers were represented by an attorney who reviewed and approved the loans Anchors was to oversee.

Anchors had only limited contact with members of the Trust. Specifically, Anchors spoke by telephone with the government's "critical" witness, Skip Alevy, Voigt's second-in-command, no more than six times between January and July of 1991. Each conversation lasted less than one minute and was merely Anchors' attempt to locate Voigt. Anchors never had any conversations with Alevy after July, 1991. Anchors' written contacts with Alevy after July, 1991 were solely through Ralph Anderskow, a Trust attorney. Anchors received messages from Alevy, relayed through Anderskow, discussing loans about to be funded and providing reasons and assurances for funding delays. Anchors and Alevy never met until commencement of the trial. He met Voigt and Anderskow for the first time personally in March, 1993.

Mr. Anchors testified at length as to his belief in the legitimacy of the Trust. In particular, the following evidence was presented in support of his belief: the Trust was riddled with lawyers and accountants; Trust monies were paid to

borrowers; articles appeared in the Pittsburgh Gazette regarding a borrower and project Voigt claimed to be funding; borrowers who preceded Anchors' association with the Trust provided assurances; the Trust appeared eager to investigate environmental impact statements made by borrowers; and Anchors was reassured by tax opinions of the Trust's tax lawyers. Even international moneymen/government witnesses far more sophisticated than Anchors testified at length as to how Voigt persuaded them beyond their better judgment to part with millions of dollars. Anchors' misperception of Voigt and the Trust continued until well after his indictment as evidenced by Anchors letter to the non-existent George Pebereau, supposed Executive Director of the Trust, just three days before his arrest regarding Anchors funding concerns with respect to the Trust. He received and his wife noted telephone calls received from the equally imaginary Remy Devoe.

The government had no evidence that Anchors was ever advised of the fraudulent nature of the scheme. The information Anchors received was provided on a "need to know" basis as evidenced by the fact that he was provided with correspondence with key passages whited out. Notably, Alevy sought to provide a list of knowledgeable participants in the scheme, Anchors' name was not included. Anchors kept meticulous records of the funds received and his expenses, which he voluntarily turned over to the FBI.

In its Superseding Indictment filed December 13, 1993, the government charged Anchors with one count of conspiracy to defraud various borrowers and investors through the operation of the Trust, fifteen counts of wire fraud, and two counts of money laundering.

Alevy's Lay Opinion Testimony

At trial, over counsel's objection, the District Court permitted Alevy to testify as a government witness with respect to Anchors' mens rea in the participation in a criminal conspiracy. In specific response to the government's request

for an opinion, Alevy testified that, in his opinion, Anchors must have known that the Trust was engaged in a large-scale fraud.

On June 23, 1994, the jury returned its verdict and found Anchors guilty of conspiracy and seven counts of wire fraud relating solely to acts involving the borrowers. Anchors was acquitted of the remaining wire fraud and all money laundering counts. On January 27, 1995, the District Court filed an Amended Judgment of Conviction affirming the jury verdict on all counts with the exception of one wire fraud count. Anchors was sentenced to thirty-two months of imprisonment to be served concurrently, on each of the counts on which he was found guilty.

The Decisions Below

During a multi-day Rule 29 hearing at the close of the government's case, Anchors moved to strike the lay opinion testimony of co-conspirator, Solis Alevy, due to its violation of the strictures of Rule 701 of the Federal Rules of Evidence.[1] After having an opportunity to weigh and evaluate the facts in the government's case, the court upheld its earlier ruling permitting this lay opinion testimony because, in its opinion, Alevy's testimony was "very helpful to the jury." App. C at

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[1] Rule 701 provides:

> If the witness is not testifying as an expert, the witnesses' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

FED. R. EVID. 701.

A-38. The trial court based its decision on the government's argument, which was reiterated in its appellate brief, that Alevy's testimony was "critical" and "helpful to the jury." App. D at A-45.

Upon review of the District Court's decision, the United States Court of Appeals for the Third Circuit concluded that the District Court's decision to permit Alevy's lay opinion testimony was in error in that it failed to meet Rule 701(b)'s "helpfulness" requirement. App. A at A-12. However, even though the trial judge concluded that Alevy's testimony was "very helpful to the jury," the panel concluded that its erroneous admission was harmless because "there is no possibility that Alevy's opinion testimony... contributed to the verdict." *Id.* at A-13. (emphasis added).

REASONS TO GRANT A WRIT OF CERTIORARI

A. Summary

The broad language of the Harmless Error rule, 28 U.S.C. § 2111 (1995), which refers only to errors that do not affect "substantial rights" of the parties, offers little guidance to appellate judges confronted with the question of whether an error in any particular case requires reversal. As a result, appellate courts are free to apply a guilt based harmless error analysis which improperly focuses on whether the fact finder came to the appropriate verdict, rather than whether the trial court's error substantially influenced the jury. Such an approach inappropriately permits appellate courts to exceed the limited scope of appellate review by substituting its judgment for that of the trial court.

Here, the Third Circuit adopted such an approach. The Court of Appeals expressly acknowledged that the District Court erred in permitting improper lay opinion testimony and therefore, the appropriate standard of review was "harmless error." This required the court to make a determination as to

whether the error had a "substantial influence" on the decision of the jury. In examining the trial record, however, the panel lost sight of this rule. In complete contradiction to the trial judge's findings that the evidence as "very helpful to the jury," the panel concluded that "there is no possibility that Alevy's opinion testimony to the same effect contributed to the verdict."

The defendant's Sixth Amendment right to a jury trial dictates adoption of a harmless error analysis that best limits appellate-level intrusion on the trial court's judgements. It is beyond the scope of appellate review for a panel to substitute its judgment for that of the trial court as to whether an error had substantial influence on the jury. The degree of protection that one's constitutional rights receive is greatly reduced by an appellate court's use of the guilt based harmless error analysis which permits this expansive scope of review. If the Third Circuit's interpretation of the harmless error standard is permitted to stand, true appellate review will be meaningless in the Third Circuit.

Because the present harmless error standard offers limited guidance for appellate review and permits appellate courts to make guilt or innocence determinations, this situation is ripe for the Court to address.

B. Having Loosely Defined The Harmless Error Standard, The Third Circuit Then Applied A Guilt Based Analysis Directly Inconsistent With This Court's Rulings In Order To Preserve The Appellant's Conviction

In defining "harmless error", the United States Code provides that:

> [o]n the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record

> without regard to errors or defects which do not affect the *substantial* rights of the parties.

28 U.S.C. § 2111 (1995) (emphasis added). The broad language of the rule, referring only to errors that do not affect "substantial rights," offers little guidance to appellate judges confronted with the question of whether an error in any particular case requires reversal. As a result, the Third Circuit applied a guilt based harmless error analysis which improperly focused on whether the fact finder came to the appropriate verdict, rather than whether the trial court's error substantially influenced the jury.

Since the burden rests on the government to establish the harmlessness of the error, the appellate court must reverse unless the government can show "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *United States v. Turcks*, 41 F.3d 893, 898 (3d Cir. 1994), *cert. denied*, 115 S. Ct. 1716 (1995) (citing *Chapman v. California*, 386 U.S. 18, 24 (1967)). Only when the appellate court:

> is *sure that the error did not influence the jury, or had but very slight effect*, the verdict and the judgment should stand, except perhaps where the departure is from a constitutional norm or a specific command of Congress. But if one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected.

Kotteakos v. United States, 328 U.S. 750, 764-65 (1946) (emphasis added).

Justice Stevens further clarified the standard in his concurring opinion in *United States v. Hasting*, 461 U.S. 499, 516 (1983). He stated "[a] federal appellate court should not find harmless error merely because it believes that the other

evidence is "overwhelming." *Id.* (Stevens, J., concurring); *see also Kotteakos*, 328 U.S. at 764-65 (stating "[t]he inquiry cannot be merely whether there was enough to support the result...[i]t is rather, ... whether the error itself had substantial influence").

In direct contrast to this Court's rulings, the Third Circuit based their opinion solely on their belief that the circumstantial evidence of Anchors' knowledge was "overwhelming". App. A at A-13. In doing so, the court used the weight of the evidence against Anchors as the sole criterion in their harmless error analysis of the District Court's error, rather than as just one factor in that analysis. Thus, the Third Circuit applied a guilt based harmless error test in that they improperly examined the case with respect to whether the jury reached the correct verdict despite the error, rather than analyzing whether the verdict was substantially influenced by the error.

In Section IV.B of their opinion, the panel reanalyzed the circumstantial evidence citing case law which focused on circumstantial evidence in the context of a criminal conspiracy.[2] The panel cited *United States v. Rea*, 958 F.2d

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[2] While the analysis in Section IV.B of the Third Circuit's opinion appears to support the jury's judgment of conviction, in its rush to judgment the Appellate Court accepted the government's version of the trial which was narrated by an attorney who was not present. In fact, the Court's analysis of the circumstantial evidence neglected to recognize the weight of the evidence that Anchors was affirmatively misled. In giving statements to the government authorities, Alevy never named Anchors as a knowing participant. In fact, Alevy only spoke to Anchors no more than six times, and each conversation was less than one minute and consisted of Anchors asking about the whereabouts of Jon Voigt.

(continued...)

1206 (2d Cir. 1992), a Second Circuit opinion, in support of its conclusion that admission of lay witness testimony which fails to meet Federal Rule of Evidence 701's helpfulness requirement is harmless error. In *Rea*, the court found that in light of the properly admitted evidence, there was "no basis" for believing the jury was influenced by the improperly admitted lay opinion testimony. *Id.* at 1221. There is a critical distinction between Anchors' case and *Rea*. In *Rea*, there was nothing in the record which suggested or indicated that either the district court judge or the government agreed that the lay opinion testimony at issue was either critical and/or very helpful to the jury.

The Third Circuit reasoned that since the government did not rely on Alevy's testimony in its summation, and instead relied on the "mountain" of circumstantial evidence to support the inference that Anchors' "must have known," there was "no possibility" that the error contributed to the verdict. App. A at A-13.

The appropriate harmless error standard required that the Third Circuit not base their opinion solely upon circumstantial evidence but instead, the standard compelled the panel to determine whether the trial court's error of admitting Alevy's lay opinion testimony substantially influenced the jury. However, in their rush to affirm Anchors' conviction, the court completely ignored the trial court's opinion which plainly

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(...continued)

In a footnote, the panel discussed the testimony of Mercedes Travis. App. A at A-12, n.5. Travis testified that Anchors was kept out of the distribution of funds from the Trust. When Travis decided who among the co-conspirators was to be paid during the summer of 1992, Anchors was not on the list. Travis' testimony constituted objective evidence that Anchors lacked knowledge of the fraud in the best way possible, which is easily distinguished from Alevy's subjective view that Anchors "must have known" of the fraud.

emphasized the importance of Alevy's testimony as to Anchors subjective knowledge. In total disregard for the trial judge's ability to determine the importance of the testimony to the jury as he witnessed the trial unfold, the panel impermissibly substituted its judgment for that of the trial judge.

C. The Third Circuit Ignored The Trial Record Wherein The Trial Court Specifically Found And The Government Agreed That The Evidence Was "Critical" And "Very Helpful" To The Jury

District Judge Brown heard the government's case and had the best vantage to weigh and analyze its evidence. He observed the demeanor of witnesses and assessed their credibility.

At trial Judge Brown admitted Alevy's opinion testimony over counsel's objection. Subsequently, at the close of the government's case, the district court conducted a multi-day Rule 29 hearing. In reviewing Anchors' motion to strike Alevy's lay opinion testimony, Judge Brown upheld his earlier ruling, made in the heat of trial, and admitted the opinion evidence at issue. Judge Brown gave reasons for his finding. He could have said the evidence was inconsequential, or allowed evidence without comment, but instead he stated that Alevy's testimony was:

> "**very helpful to the jury** because it is a statement from the claimed deceiver himself as to what his perceptions were of his deceit, its objects and its effect."

App. C at A-38 (emphasis added). Judge Brown further ruled post-trial that:

> not to permit Alevy to voice his opinion would have unfairly constrained the prosecution's presentation of its theory of the case, which was that a hallmark of the Trust conspiracy was

> dissemination of self-serving rhetoric designed to insulate its participants from detection.

App. D at A-45 (emphasis added).

Furthermore, the government underscored the importance of Alevy's testimony by emphasizing the critical nature of his testimony in its brief. The government argued that:

> Alevy's testimony was helpful to the jury in its evaluation of Anchors' mental state, the critical disputed issue in this case against Anchors.

Id. (emphasis added).

The significance of the trial judge's finding with regard to the importance of Alevy's testimony cannot be understated. Whether Anchors had knowledge of the fraud and conspiracy is the "critical disputed issue" in this case. The fact that Judge Brown found the testimony to be "very helpful to the jury" in determining Mr. Anchors' mental state after he had heard all of the evidence demonstrates that the admission of the opinion evidence cannot be deemed harmless.

1. Evidence Which The Trial Judge Found To Be "Very Helpful To The Jury" And Which The Government Characterized As "Critical" Cannot, By Definition, Be "Harmless"

"To say that an error did not contribute to the verdict is ... to find that error unimportant in relation to everything else the jury considered on the issue in question as revealed in the record." *Turks* 41 F.3d at 898 (citing *Yates v. Evatt*, 111 S. Ct. 1884, 1893 (1991)) (emphasis added).

Both the government and trial judge determined that the same evidence was "critical" and "very helpful to the jury." By definition, helpful and important evidence cannot be "harmless" evidence. Therefore, it is impossible for the

admission of Alevy's lay opinion testimony to be unimportant and therefore, harmless error.

It was logically, factually, and legally wrong for the panel to suggest that there was "no possibility" that this evidence influenced the "critical disputed issue" when, at the close of the government's case, Judge Brown specifically found that Alevy's lay opinion testimony was "very helpful to the jury." The factual record simply does not establish "beyond a reasonable doubt" that the evidence at issue did not contribute to the jury's verdict. It would have been too easy for both Judge Brown and the government to find the opinion testimony to be insignificant. Simply because the government chose not to compound the trial court's two earlier errors - admitting Alevy's testimony at trial and subsequently at the Rule 29 hearing - by not referring to Alevy's testimony in its summation, does not mean that the admission of such testimony was not prejudicial to Anchors.

The panel completely ignored the appropriate inquiry: whether the verdict was substantially influenced by the District Court's decision to permit the introduction of Alevy's lay opinion testimony? Had the panel made the appropriate inquiry, they would have realized that even if the jury accepted some or all of the circumstantial evidence against Anchors as true, the jury could have also relied on Alevy's testimony in reaching its verdict and therefore, both the circumstantial evidence and Alevy's testimony could have contributed to the jury's verdict. Thus, by focusing its attention on the "correctness" of the jury's judgment despite the error, rather than analyzing whether the verdict was substantially influenced by the error, the panel improperly applied a guilt based harmless error analysis to the facts of this case.

D. The Guilt Based Approach Used By The Third Circuit Is Inconsistent With The Constitutional Framework Of Our Judicial System In That It Permitted The Appellate Court To Substitute Its Judgment For That Of The Trial Court And Jury

This Court's many admonitions in *Kotteakos* and other early cases make clear that the question involved in harmless error analysis is not whether the jury reached the correct verdict despite the error, but whether the verdict was "substantially influenced" by the error. *Kotteakos*, 328 U.S. at 764-65. For example, in *Kotteakos v. United States*, 328 U.S. 750 (1946), this Court stated: "[t]he question is, not were [jurors] right in their judgment, regardless of the error or its effect upon the verdict. It is rather what effect the error had or reasonably may be taken to have had upon the jury's decision." *Id.* at 764.

This rule rests on a sound premise. The Constitution grants criminal defendants the right to have juries, not appellate courts, render judgments of guilt or innocence. *See* U.S. CONST. art. III, 2, cl. 3 (stating "[t]he Trial of all Crimes, except in Cases of Impeachment, shall be by Jury...."); *id.* amend. VI (stating "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed..."). As Justice Frankfurter noted:

> [i]n view of the place of importance that trial by jury has in our Bill of Rights, it is not to be supposed that Congress intended to substitute the belief of appellate judges in the guilt of an accused, however justifiably engendered by the dead record, for ascertainment of guilt by a jury under appropriate judicial guidance, however cumbersome that process may be.

Bollenbach v. United States, 326 U.S. 607, 615 (1946).

As such, the appellate court is not authorized to look at the printed record, resolve conflicting evidence, and reach the conclusion that the error was harmless because they believe the defendant is guilty. *Weiler v. United States*, 323 U.S. 606, 611 (1945). Such acts would require an appellate court to substitute their "judgment for that of the jury and, under our system of justice, juries alone have been entrusted with that responsibility." *Id.*; *see also Kotteakos*, 328 U.S. at 763-64 (stating "[i]t is not the appellate court's function to determine guilt or innocence.... Those judgments are exclusively for the jury, given always the necessary minimum evidence legally sufficient to sustain the conviction unaffected by the error"). As Justice Traynor aptly observed:

> [a]ll too often an appellate court confuses review by applying the substantial evidence test to determine whether an error is harmless. Such a court considers only the evidence in support of the judgment and ignores erroneous matter. It assumes that the trier of fact, having decided against the appellant, believed all properly admitted evidence against him and disbelieved all evidence in his favor. No wonder that under such a review most errors are found harmless.

ROGER J. TRAYNOR, THE RIDDLE OF HARMLESS ERROR 28 (1970). This problem was also recognized by Justice Marshall in his dissent in *Schneble v. Florida*, 405 U.S. 427 (1972), where the majority found a violation of the Bruton doctrine to be harmless error based on overwhelming evidence of the petitioner's guilt. *Id.* at 428. Marshall stated that "the mistake the Court makes is in assuming that the jury accepted as true all of the other evidence." *Id.* at 436 (Marshall, J., dissenting).

The very nature of the appellate function leaves judges of the courts of appeals poorly equipped to make such guilt determinations. An appellate judge's view of the trial is limited to the record, and many events of trial pass without

recognition in the printed transcript. For example, the appellate court does not have the opportunity to watch the demeanor of witnesses, listen to the intonations of their voices, or engage in any of the countless other observations that inhere in an assessment of credibility such as such as age, sex, intelligence, experience, occupation, demeanor, or temperament of the witness which may affect the probative value of testimony. Unlike an appellate court, the trial court and jury are in a position to take note of such factors.

It is a well settled principle of law that the trial court, and not the Court of Appeals, is in the best position to consider the complicated evidentiary issues involved in a given case. *United States v. Retos*, 25 F.3d 1220, 1228 (3d Cir. 1994). As such, the appellate court is not permitted to substitute its judgment for that of the trial judge. *E.g. United States v. Taylor*, 487 U.S. 326, 336 (1988); *Morales v. City of San Rafael et al.*, 1996 U.S. App. LEXIS 23346, at *23 (9th Cir. May 6, 1996) (Kleinfeld, J., dissenting); *United States v. Torres*, 53 F.3d 1129, 1144 (10th Cir. 1995); *United States v. Nobles*, 69 F.3d 172, 180 (7th Cir. 1995); *Reich v. Lancaster et al.*, 55 F.3d 1034, 1051 (5th Cir. 1995).

In his dissent to a recent Third Circuit opinion, Justice Aldisert identified several reasons why district court judges are much more capable than appellate court judges in exercising broad discretion. *Washington v. Philadelphia County Court of Common Pleas*, 1996 U.S. App. LEXIS 16286 (3d Cir. 1996). He further articulated the importance of respecting the district court's discretionary power.

> They [district judges] are on the scene. They smell the smoke of battle. Indeed, Professor Maurice Rosenberg has identified four reasons that support vesting discretion in trial courts. ... One is the plain urge to economize on judicial energies. ... A second reason is maintaining morale. ... The third reason is ... finality. ... The most pointed and helpful reason is the

> superiority of his position. It is not that he knows more than his loftier [brothers and sisters]; rather [the trial judge] sees more and senses more. In the dialogue between the appellate judges and the trial judge, the former often seem to be saying: "You were there. We do not think we would have done what you did, but we were not present and we may be unaware of significant matters, for the record does not adequately convey to us all that went on at the trial. Therefore, we defer to you."

Washington, 1996 U.S. App. LEXIS 16286, at *54-55 (Aldisert, J., dissenting).

The Third Circuit's adoption of a guilt based harmless error analysis permitted the panel to exceed the scope of appellate review by inappropriately substituting its judgment for that of the trial court. The panel is ill-equipped to make such guilt based determinations.

CONCLUSION

The Third Circuit's adoption of a guilt based harmless error analysis impermissibly allowed it to focus on whether the fact finder came to the appropriate verdict, rather than whether the trial court's error substantially influenced the jury. In doing so, the court exceeded the normally limited scope of appellate review and, instead, substituted its judgment for that of the trial court. The adoption of such an approach ensures that an appellate court will never find an error to be anything more than harmless.

Each time the appellate court rules that an error is harmless, it has the potential of eroding an important legal principle because the rights of individuals, both constitutional and otherwise, go unenforced. Moreover, the deterrent force of a reversal remains unfelt by those who caused the error.

If the Third Circuit's interpretation of the harmless error standard is permitted to stand, it will improperly deny appellate review -- the only effective remedy -- to appellant-defendants who have a bona fide claim of trial court error with prejudicial effects. If real errors by the trial court are not appropriately reviewed by an appellate court, then true appellate review is meaningless in the Third Circuit.

For the above reasons, Petitioners respectfully request that the Court grant a Writ of Certiorari in this case.

Respectfully submitted,

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